

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE		PAGE 1 OF 59 PAGES	
2. AMENDMENT/MODIFICATION NO. 0002		3. EFFECTIVE DATE 3/4/2004		4. REQUISITION/PURCHASE REQ. NO.	
5. PROJECT NO. (If applicable) FPRI for the MMRP		6. ISSUED BY CODE W912DY		7. ADMINISTERED BY (If other than Item 6) CODE W912DY	
U.S. Army Engineering and Support Center, Huntsville 4820 University Square Huntsville, AL 35816-1822		ATTN: Michael R. Duffy (CEHNC-CT-E)			

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)		(√)	9A. AMENDMENT OF SOLICITATION NO. W912DY-04-R-0009
		×	9B. DATED (SEE ITEM 11) 2/13/2004
			10A. MODIFICATION OF CONTRACTS/ORDER NO.
			10B. DATED (SEE ITEM 13)
CODE	FACILITY CODE		

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☒ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☒ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(√)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☐ is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Offerors are to replace the previous versions of Section H and Section I with the amended versions of Section H (pages 1-12) and Section I (pages 1-46) that are attached to this SF30.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
_____ (Signature of person authorized to sign)		BY _____ (Signature of Contracting Officer)	

Section H – Special Contract Requirements

1. GENERAL INSURANCE REQUIREMENTS.

1.1. Workers' compensation and employer's liability. Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

1.2. General Liability. The contracting officer shall require bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence. The policy should provide for contractual liability, and name USACE as an additional insured with a waiver of subrogation.

1.3. Automobile liability. The Contractor shall maintain throughout the contract performance period automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage.

1.4. Errors & Omissions Liability. \$3,000,000 per claim and in the aggregate. This policy should not exclude claims due to pollution.

1.5. Corporate Policies. The Contractor may use corporate policies to cover Workman's Compensation, Automobile, General Liability, and Errors & Omissions Liability insurance requirements specified in this Section H. If a contractor uses a corporate policy for this work, the aggregate limits that apply to the General Liability, Automobile Liability and Errors and Omissions Insurance should be \$5,000,000.

1.6. Common Coverage Elements to the General Liability, Automobile Liability Policies. Each policy shall provide for a separation of the insured's for defense of claims. With the exception of non-payment of premium, the actions of the named insured will not affect the coverage provided to the Government under these policies.

2. INDEMNIFICATION & COST CONTAINMENT INSURANCE.

2.1. Financial Indemnification. For the duration of each Task Order issued under this contract, the Contractor will be responsible for the financial indemnification of the United States Government, the Department of Defense, its officers, agents, and employees for **up to** an additional two (2) times the price of each individual task order issued minus the cost of the insurance premium (example: \$1 million task order price plus \$2 million financial indemnification by the Contractor less the insurance premium, as specified by the site-specific task order scope of work). It is expected that for most projects, the Government will only require the financial indemnification to be one times the task order cost less the cost of the insurance premium. In addition, the Contractor shall be responsible for the financial indemnification of the United States Government, the Department of Defense, its officers, agents, and employees for regulatory reopeners and changes in environmental

laws and standards identified within a period of five (5) years after completion, approval and acceptance of the final milestone for each site as defined for each site-specific scope of work for each individual task order.

2.2. Indemnification Exclusions. The indemnification required in connection with the completion of work under this contract does not extend to the three exclusions identified below; however, the Contractor shall have the burden of proving its entitlement to any of these indemnity exclusions:

2.2.1. "Acts of God" as defined under CERCLA Section 101 (42 U.S.C. 9601) where the resulting environmental condition was not contributed to by any negligent acts or omissions of the Contractor, its agents, servants, employees or invitees.

2.2.1.1. ACT OF GOD [CERCLA 101 §(1)]: Defined as an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

2.2.2. The remediation of high-level radiological waste and chemical warfare material unless specifically identified and covered in the insurance policy.

2.2.2.1. HIGH-LEVEL RADIOACTIVE WASTE (10 CFR 72): NRC defines HLW in 10 CFR 72 as the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in concentrations that require isolation.

2.2.2.2. CHEMICAL WARFARE MATERIAL (CWM): An item configured as a munitions containing a chemical substance that is intended to kill, seriously injure, or incapacitate a person through its physiological effects. CWM also includes V- and G- series nerve agent, H-series blister agent, and lewisite in other than munitions configurations. Due to their hazards, prevalence, and military-unique application, chemical identified sets (CAIS) are also considered CWM. CWM does not include: riot control agent, chemical herbicides; smoke and flame producing items, or soil, water, debris, or other media contaminated with chemical agent.

2.2.3. Claims from any natural resources damages not otherwise attributable to Contractor negligence or intentional misconduct in the performance of work under this contract.

2.3. Insurance Indemnification Requirements. Satisfactory evidence of the Contractor's ability to financially indemnify the Government as required by Section H, Paragraph 2.1, shall be provided in the form of remedial cost containment insurance, in a minimum amount of at least eighty-five (85) percent of the task order price. The items covered by the insurance policy shall not entitle the Contractor to an equitable adjustment. The limits of indemnification shall never exceed two (2) times the task order amount less the cost of the insurance premium. **Unless otherwise stated in the performance work statement for the task order, the Contractor shall provide indemnification at one (1) times the task order price.** The Contractor shall provide proof of insurance to the Contracting Officer of the Corps Office issuing the Task Order within thirty (30) calendar days of task order award. Upon review and approval of the insurance policy by the responsible Corps Contracting Officer, the Government will issue a **Notice To Proceed** after task order award.

Therefore, before Award, the Government will review the Contractor's insurance policy along with all applicable endorsements, in the Contractor's proposal. USACE encourages offerors to highlight any advantages there may be for the Government in the insurance protection they are providing. It has been the Government's experience that the insurance underwriter will not bind the policy until payment is made and the payment cannot be made until the task order is awarded. Therefore, the Government will review and approve the insurance policy, along with all applicable endorsements, award the task order, and issue the Notice to Proceed once the final binding policy along with all applicable endorsements, is issued and approved by the Government's Contracting Officer. Approval of the final binding policy will not be unreasonably withheld as long as the terms and conditions agree with those contained in the final draft policy.

2.4. Removal/Remedial Cost Containment Insurance.

2.4.1. Insured. The US Government shall be an **additional insured** under the policy. In the event the named insured is unable to complete a project, the insurance company's obligations under this policy shall apply to the benefit of USACE who at its option and with the approval of the underwriter, shall find an alternative contractor to complete the project to the original specifications in the insured work plan. The approval of alternative contractors by the underwriter shall not be unreasonably withheld. **The rejection decision on a replacement contractor shall not be unreasonably withheld from the additional insured from the date the request is received by the underwriter. If the replacement contractor is not rejected within a reasonable time period, the contractor will be considered approved by the underwriter.**

2.4.2. Term. The term of the policy shall be adequate to cover the task order requirements. The term of the policy may vary depending upon the proposed schedule of work by the Contractor.

2.4.3. Insurance Carrier. Must be A.M. Best's rated A (Excellent) Financial Size Category (FSC) IX, or better.

2.4.4. Coverages.

2.4.4.1. Coverage and limits are to reflect this task order only and are not to be commingled with other policies covering other projects, task orders or operations of the Contractor. The specified insurance shall be primary.

2.4.4.2. Lines of Coverage: Removal/Remedial Cost Containment

The insurance coverage shall, as a minimum, provide the following:

Removal/Remedial Cost Containment – Remediation Coverage: Changes in quantities (e.g. amount of contaminated soil remediated, amount of required testing, number of removal/remedial actions required, amount of labor, supplies, equipment, and materials, etc.), changes in the removal/remediation methods or technical approaches used, changes due to discovery of previously unknown MEC at identified sites within each task order issued, regulatory re-openers and changes in environmental laws or standards, first and third party on and off site remedy costs including off site disposal coverage and all other tasks associated with the completion of the scope.

The Contractor shall provide a description of the procedures it will use to comply with the claims notification requirements in the Removal/Remediation Cost Containment Insurance policy the contractor is providing. This information should be sufficient to determine if a task order is moving into an insured cost over run situation. If these claims services are to be provided by an insurance broker, describe the procedures used by the broker and the broker's capabilities in this area.

2.4.5. Insurance Costs. The offeror shall disclose all costs associated with the insurance including any brokerage or consulting fees that are not included in the premium.

2.5. Risk Transfer Limits.

2.5.1. Risk transfer limits for cost containment insurance shall be at least eighty-five (85) percent of the task order price, if required in the site-specific scope of work for each task order. The balance of the indemnification may be covered by other securities, including other financial instruments and other corporate assets.

2.5.2. Failure of the Contractor to obtain and maintain the level and type of insurance coverage required for each task order issued shall not relieve the Contractor from the indemnity obligation established under this section H. The Contractor's indemnity proposal shall clearly identify all insurance related deductibles, retentions, loss funds, and coverage exclusion(s).

2.5.3. The insurance policy shall be endorsed to state that coverage shall not be suspended, voided, or cancelled by either the Contractor or the insurer without **sixty (60) days** prior written notice, when cancellation is for other than non-payment of premium. If cancellation is for non-payment of premium then written notice of intent to cancel shall be no less than ten (10) days before cancellation. The Removal/Remedial Cost Containment Insurance shall not be cancelled except for non-payment of premium or a material misrepresentation made during the application process for this insurance. If a combined policy form is used to comply with this section, with the exception of cancellation for non-payment of premium the policy should state the actions of one insured do not prejudice the rights of another insured for protection under the policy. No policy may be reduced in limit or coverage, nor materially changed without **thirty (30) days** written notice by the Contractor to the Contracting Officer. Moreover, the Contractor must cooperate fully with the insurer throughout the policy term and as outlined in the policy, so that coverage under the policy is not prejudiced. Finally, cancellation of the policy does not relieve the Contractor of its indemnification to the Government.

2.6. Assignability. In the event of bankruptcy, insolvency or the inability of the contractor to perform under the insured contract, the benefit of this insurance will flow to the additional insured, USACE. USACE will endeavor to find a replacement contractor to complete the original insured task order. **The insurer will not unreasonably withhold the approval of the replacement contractor and will supply the additional insured with a response to the request to assign the policy to the additional insured with in a reasonable amount of time of the request.**

2.7. Corporate Assets. The Contractor may use its corporate assets, i.e., corporate bonds, U.S. bonds, letters of credit, certified cashier's checks, bank drafts, certificates of deposit, guarantee agreements, corporate stock, etc. in order to finance exclusions, deductibles before attachment points, and self-insured retentions (i.e., the 15% of indemnification not covered by the insurance policy). The Contractor shall provide in sufficient detail, to facilitate an objective determination, on

how the Contractor will meet its financial obligations to fund the self-insured retentions on the insurance policies.

3. ORGANIZATIONAL CONFLICTS OF INTEREST.

3.1. Disclosure. The Contractor shall provide a disclosure statement with its task order proposal, which concisely describes all relevant facts concerning any past or present organizational conflicts of interest relating to the work in each task order. In the same statement, the Contractor shall provide the information required in the following paragraph to assure the Government that the conflicts of interest have been mitigated and/or neutralized to the maximum extent possible. If a conflict of interest is discovered after task order award, the Contracting Officer will make a decision whether to terminate or rescind the task order and/or contract at that time.

3.2. Potential Conflicts of Interest. This request for proposals is open to any offeror to compete as a prime contractor, subcontractor or in any teaming arrangement. In order to avoid any organizational conflicts of interest, or even the appearance of any organizational conflicts of interest, any contractor performing environmental services work at the follow-on **sites(s)** under each task order will need to avoid, neutralize and/or mitigate -- prior to task order award -- significant potential conflicts of interest that may prejudice effective competition. The Contracting Officer has determined that at a minimum contractors currently performing work on the identified **sites(s)** under each task order must ensure that all data pertaining to contamination at the sites compiled by or in the possession of such contractors shall be made available to all potential Multiple Award **Response** Contract (MARC) contractors in a timely fashion to the maximum extent possible by **transferring** such data in to a data depository.

4. WARRANTY PERIOD.

The Contractor may be required to provide **up to** a 5-year warranty period on all sites completed as identified in each site-specific Performance Work Statement for each task order from the date of acceptance of the final milestone for each site, unless a task order is issued that specifically states that a warranty period is not required for a particular site. During this warranty period, the Contractor shall be responsible for remediation and warrant the Government from cost increases to the task order for changes due to discovery of additional MEC or MC at the site causing the regulators to refuse to close-out the site(s), changes to remediation methods or technical approaches, regulatory re-openers, and changes in environmental laws or standards that cause the regulators to refuse to close-out the site(s). The warranty is only for the existing MEC or MC, should ongoing or subsequent releases caused by others, other than the Contractor working on the site, the responsible party shall be responsible for the additional cleanup. The warranty period, if required under the individual task order, will not be terminated early for any reason. Once the warranty ends, the Government assumes the responsibility for the site(s).

5. RETAINAGE.

Retentions. The Contractor may bill for up to ninety (90%) percent of the total task order cost established under each task order in accordance with FAR Clause 52.232-32, Performance-Based Payments as found in this contract for contract financing payments. The Government will withhold the remaining ten (10%) percent of the Task Order Funding until the final milestone is achieved by the Contractor. The final milestone is generally the "project closeout" document, but this will be identified in each task order issued.

6. FINES, PENALTIES AND DAMAGES.

The contractor shall be solely liable for fines and/or penalties assessed by state regulators and/or other cognizant regulatory agencies for failure to comply with any requirements of this contract, unless excused by Paragraph 2.2.1 of this Section H. "Compliance" shall include performance and completion of the work under each task order as defined by the Performance Work Statement or work plan or other approved plan in accordance with all applicable requirements of law, the contract, and any other approved plans and documents, and within the specified time schedules established under each task order and/or this contract. Any amounts assessed against and paid directly by the Government and that are attributable to fines and penalties resulting from the Contractor's performance or failure to perform will be deducted from the payment(s) to the contractor. If the fines or penalties are assessed against the Contractor, and if paid directly by the Contractor, the amounts would not be deducted from the payment(s) to the Contractor.

The contractor shall be solely liable for all indirect, special, punitive and consequential damages attributable to any negligence or intentional acts on behalf of the Prime Contractor, its employees, or its Subcontractors and their employees.

The Contractor shall be financially liable to the U.S. Government, the Department of Defense, its officers, agents, and employees from and against all claims, demands, suits, actions, liabilities, judgments, civil fines or penalties, criminal fines or penalties, costs and expenses as may arise out of the Contractor's pursuit of or failure to satisfy its contractual obligation for completion of the work as defined in Section C of this solicitation and as defined in each site-specific scope of work for each individual task order.

7. PROGRESS REPORTS.

In addition to reports/data as may be required under Section C of this contract and task order specific requirements, the Contractor shall, at a minimum, provide to the Contracting Officer a consolidated clean-up progress report monthly, documenting the clean-up progress at each site/installation. This report shall also provide expended funds and estimates to complete each site under the Task Order. The Contractor should explain the cost accounting procedures that will be used to keep the underwriters of the Cost Containment Insurance apprised of the historical costs incurred in completing the insured activities in the Task Order.

8. MINIMUM GUARANTEE.

The minimum guarantee for the base period shall be \$500,000.00 and each option period shall be \$250,000.00, which may be satisfied by obligating funds and/or issuing task orders against the base contract(s) that meet or exceed the minimum guarantee amounts.

9. BRAC WORK.

Special procedures will be followed for Base Realignment And Closure (BRAC) installations. The Government will comply with DFARS Subpart 226.7102 and EFARS Subpart 26.72. If the Government determines through its own market research that local vicinity firms or small business firms can perform the work and the contractor(s) holding the contract(s) is/are not from the local vicinity or small business, the project may be done outside the scope of the contract(s) under another contract vehicle.

10. FOLLOW ON WORK.

Follow on Task Orders at Installations or Sites where work is currently being performed by one of the FPRI MARC Contractors may go to the Contractor that is currently working on the installation or site and may not be competed in accordance with FAR Subpart 16.505. This will be based on the Contractor's current and/or past performance at the installation or site, as well as the Contractor's capability of performing the work, the ability to handle the additional work capacity, and the ability to obtain the needed cost containment insurance. It is in the Government's best interest to limit the number of Contractors responsible for site cleanup. Follow on Task Orders will be evaluated on a case-by-case basis. If determined by the Contracting Officer, the Task Order will be competed among the MARC Contractors under the procedures outlined in this Section H, in order to determine the Contractor that will offer the Best Value to the Government for the work to be done.

11. WAGE DECISIONS AND/OR WAGE DETERMINATIONS.

All task orders that are subject to Service Contract Act will have the applicable wage decision/determination provided in the Task Order RFP.

12. ORDER OF PREFERENCE FOR WORK EXECUTION.

On-going military operations at active installations shall take precedence over environmental services described under this contract or any task orders issued. Work stoppages due to any military operations will not be grounds for task order modification of cost and/or schedule. The Government will provide a likely schedule of interrupted operations due to military operations, e.g., the number of expected downtime days. However, it is the responsibility of the Contractor to provide pricing to account for any impacts to their schedule.

13. CORPS-WIDE CONTRACT ACCESS.

The resulting contract(s) may be used for work within the Continental United States (CONUS) or Outside the Continental United States (OCONUS). Any U.S. Army Corps of Engineers District wishing to use these contract(s) will request the needed contract capacity via a Memorandum of Agreement. The U.S. Army Engineering and Support Center, Huntsville, will award the base contract(s) with individual task orders being negotiated, issued, administered, and closed out by the individual cognizant districts that are using this contract(s).

14. ORAL PRESENTATIONS.

Oral Presentations may be required and used to evaluate the Contractor's technical approach, team, and other requirements as specified on a task order by task order basis depending on the project. Oral Presentations will also be used for the award of the Base Contract(s).

14.1. GENERAL INSTRUCTIONS FOR ORAL PRESENTATIONS.

Technical proposals will be requested for each task order in oral form by means of an oral presentation to the Task order evaluation team members. Overall selection of the

successful offeror will be based on the following criteria: Technical Approach, Technical/Personnel Experience, Schedule, Capacity, Insurance terms and conditions, and other considerations that identified in the Task Order RFP. Price will be separately and subjectively evaluated.

The Offeror shall use the presentation to explain its understanding, approach, and allocation of resources to enable a complete evaluation of the offeror's capability to perform the task. The offeror shall demonstrate how they plan to meet the stated requirements or goals and that the offeror has the necessary understanding, expertise, facilities, personnel and experience to successfully accomplish the proposed work. The Offeror shall identify any additional types of information they believe are needed in the performance of the contract.

No price information shall be included in the presentation narrative or briefing charts. A written cost proposal, including the life cycle cost for each site, will be provided as hard copy, in accordance with the instructions provided in the task order RFP.

The time limit (determined per task order) will begin with the Corp's direction to begin. The presentation will be immediately terminated at the completion of the time limit, unless the Offeror completes its presentation prior to the expiration of the time limit. At the conclusion of the presentation or the time limit, whichever, occurs first, the Government may ask questions of the briefer. The questions and answers will not count against the time limit. Answers to questions will be videotaped and will be considered for evaluation purposes. The key personnel making the presentation will respond to the questions. Offerors may bring no more than five representatives to the oral presentation, with the proposed Project Manager being a member of the presentation team.

All Offerors shall document the main point of the oral presentations on PowerPoint slides and provide an original and copies of the slides to the Contracting Officer as a part of the Limited Written Technical Proposal, which is due to the Contracting Officer by the date and time prescribed on the task order RFP. Offerors may provide a one-page note to accompany each slide with an original and (TBD) printed copies thereof also as part of their Limited Written Technical Proposal. All printed copies must be legible. No other written documentation of the oral presentation will be accepted. No changes to this written documentation will be accepted at the time of oral presentations. The Task Order Evaluation team members will not inform an Offeror of their strengths, deficiencies, or weaknesses during the presentation, and they will not engage in discussions during the presentation. Offerors are prohibited from taping or recording their own presentation.

15. MARC ID/IQ INFORMATION

15.1. More than one contract is being awarded for the same services as stated in Section C of this contract. Each contractor will be afforded a fair opportunity to be considered for each task order in excess of \$2,500.00.

15.2. The Contracting Officer, along with the advice of his/her technical experts, will determine the factors and subfactors necessary to evaluate each contractor's proposal for a task order award. These factors and subfactors may vary and will be determined on a task order by task order basis. However, all task order proposal evaluations will include the following evaluation factors: technical approach, project delivery team, insurance protection provided, past performance, small business subcontracting, life cycle costs, as well as a cost/price evaluation.

15.3. USACE encourages offerors to highlight any advantages there may be for the Government through the insurance protection that they are providing. In addition, the Contractor shall provide a description of the procedures it will use to comply with the claims notification requirements in the Remediation Cost Containment Insurance policy the contractor is providing. This information should be sufficient to determine if a task order is moving into an insured cost over run situation. If these claims services are to be provided by an insurance broker, describe the procedures used by the broker and the broker's capabilities in this area.

15.4. If the contractor believes it was not fairly considered for a particular task order, the contractor may present the matter to the contracting officer. The contractor may appeal the explanation or decision of the contracting officer to the USACE Ombudsman, who is the USACE PARC, at the following address:

Headquarters, U.S. Army Corps of Engineers
Attention: CEPR-P (USACE Ombudsman)
441 G Street, N.W.
Washington, D.C. 20314-1000.

The ombudsman will review the contractor's complaint, and in coordination with the contracting officer, ensure that the contractor was afforded a fair opportunity to be considered for the task order.

16. AFARS 5116.5 - MULTIPLE AWARD TASK ORDER CONTRACTS

AFARS 5116.5 which requires the proposals submitted in response to competition under Multiple Award Task Order (MATO) Contracts to be limited to no more than five pages, including attachments, will not be followed. The Principal Assistant Responsible for Contracting (PARC) has delegated to the Chiefs of the Contracting Offices the authority to approve deviations from the five-page limitation for MATO proposals submitted in response to competition under Environmental Remediation MATO Contracts. The deviation will be implemented by approved findings and determinations (D&Fs), which will be forwarded to the PARC within 5 days after approval.

This contracting tool requires the evaluation of multiple factors and subfactors in order to determine which contractor will provide the best value to the Government on a task order by task order basis, including evaluation of the insurance policy. The factors and subfactors, as stated in Paragraph 15.2, will be determined on a task order by task order basis as the requirements and scope of services will drive what the contractor will need to provide in their proposal for evaluation purposes.

17. INCREMENTAL FUNDING.

In accordance with the National Defense Authorization Act for Fiscal Year 2003, Section 827, Section 2306c of Title 10 of the U.S. Code was amended to allow multiyear funding for environmental services for military installations. When implementation regulations are provided, this contract shall also be modified to incorporate this authority.

18. SECURITY CONTRACT LANGUAGE FOR ALL UNCLASSIFIED CONTRACTS.

All Contractor employees (U.S. citizens and Non- U.S. citizens) working under this contract (*to include grants, cooperative agreements and task orders*) who require access to Automated Information Systems (AIS), (stand alone computers, network

computers/systems, e-mail) shall, at a minimum, be designated into an ADP-III position (non-sensitive) in accordance with DoD 5220-22-R, Industrial Security Regulation. The investigative requirements for an ADP-III position are a favorable National Agency Check (NAC), SF-85P, Public Trust Position.

Proof of a favorable NAC shall be submitted to U.S. Army Engineering Support Center, Huntsville, Attn: Security Officer, CEHNC-SL, 4820 University Square, Huntsville, AL 35816-1822, within three (3) working days after award of any contract or task order, and shall be submitted prior to the individual being permitted access to an AIS.

- a. Contractors who have a commercial or government entity (CAGE) Code and Facility Security Clearance should submit forms through their Facility Security Office, who shall forward results of the NAC to the Huntsville Center's Security Officer (address above).
- b. For those contractors who do not have a CAGE Code or Facility Security Clearance, the SF 85P and 2 copies of the SF 87 (Fingerprint Cards) shall be completed and submitted to the Huntsville Center's Security Officer (address above.) These must be mailed or hand-delivered, as original signatures are required. Fingerprint cards are available upon request and may be taken to any local law enforcement center for completion. For those in the Huntsville area, fingerprint cards may be completed by contacting the Huntsville Center's Security Officer, (256) 895-1496.

In accordance with Engineering Regulation, ER 380-1-18, Section 4, foreign nationals who work on Corps of Engineers' contracts or task orders shall be approved by the HQUSACE Foreign Disclosure Officer or higher before beginning work on the contract/task order. This regulation includes subcontractor employees. (NOTE: exceptions to the above requirement include foreign nationals who perform janitorial and/or ground maintenance services.) The contractor shall submit to the Center/Division/District Contract Office, the names of all foreign nationals proposed for performance under this contract/task order, along with documentation to verify that he/she was legally admitted into the United States and has authority to work and/or go to school in the US. Such documentation may include a US passport, Certificate of US citizenship (INS Form N-560 or N-561), Certificate of Naturalization (INS Form N-550 or N-570), foreign passport with I-551 stamp or attached INS Form I-94 indicating employment authorization, Alien Registration Receipt Card with photograph (INS Form I-151 or I-551), Temporary Resident Card (INS Form I-688), Employment Authorization Card (INS Form I-688A), Reentry Permit (INS Form I-327), Refugee Travel Document (INS Form I-571), Employment Authorization Document issued by the INS which contains a photograph (INS Form I-688B).

Classified contracts require the issuance of a DD Form 254 (Department of Defense Contract Security Classification Specification).

A Copy of the SF-85P is included after Section J.

(End of Provision)

18. ADDITIONAL CLAUSES AND LOCAL PROVISIONS:

52.106-4001 – Contracting Officer's Instructions

a. The Contractor shall not accept any instructions issued by any person other than the Contracting Officer. If a Contracting Officer's Representative (COR) is appointed, the appointment will be done by letter to the COR with the scope of the COR's authority (limited by the Contracting Officer) set forth in the appointment letter. A copy of the appointment letter will be furnished to the Contractor.

b. No change in the scope of the base contract or that of the performance work statements for each individual Task Order, which would effect a change in any terms or conditions of this contract shall be made by any individual other than the Contracting Officer via a modification. The Contractor is responsible for ensuring that all Contractor personnel are knowledgeable and cognizant of this contract provision. Changes to the contract effort accepted and performed by the Contractor personnel outside of the contract without specific authorization by the Contracting Officer, shall be the responsibility of the Contractor.

(End of Provision)

52.203-4029 – Correspondence In English

All correspondence and communication between the Contractor and the U.S. Government pertaining to these Contracts shall be in the English Language.

(End of Provision)

52.214-34 -- Submission of Offers in the English Language (APR 1991)

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of Provision)

52.214-35 -- Submission of Offers in U.S. Currency (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(End of Provision)

52.242-4000 -- Performance Evaluation of Contractor

The Contractor's performance will be evaluated upon final acceptance of the work. However, interim evaluations will be performed in accordance with the Quality Assurance Surveillance Plan (QASP) developed for each Task Order. Final evaluations will be prepared within 45 days after the project has been 100% completed and all milestones have been accepted and approved by the Regulators.

(End of Provision)

52.242-4018 – Technical Liaison and Surveillance

Performance by the Contractor of the technical aspects of this Contract as described in the Performance Work Statement (PWS) for this Contract, Section C, is under the cognizance of the U.S. Army Engineering and Support Center, Huntsville. All matters relating solely to the technical aspects of the Contractor's performance may be communicated directly to the technical point of contact named in the paragraph below. All other matters shall be referred to the cognizant administration office for the individual Task Orders.

Technical Point of Contact: Lisa B. Harris
Organization Code: CEHNC-OE-CX
Telephone Number: (256) 895-1344

(End of Provision)

52.242-4612 Methods of Orders (Bilateral)

a. Supplies and services to be furnished under this Contract shall be ordered by the issuance of a bilateral order using DD Form 1155. Task Orders will be Firm-Fixed Price only.

b. Based upon the Contractor's proposal, the Government and Contractor will enter into discussions to reach agreement on a cost of completion for a Task Order. After agreement has been reached by the Government and the Contractor for the work to be performed under the Performance Work Statement for an individual Task Order, the Government will provide an unsigned DD Form 1155 to the Contractor for signature. The Contractor must return the signed DD Form 1155 to the Government for signature by the Contracting Officer within three (3) days of receipt.

c. If the Contractor determines that the scope of work does not fit within the scope of the basic contract, the Contractor shall notify the Contracting Officer immediately in writing and shall include the reasons for such judgment.

d. The Contractor shall not transfer labor or travel/material dollars between separate Task Orders.

e. All Task Orders must be signed by the Contracting Officer before performance begins. No work shall be initiated by the Contractor prior to receipt of the Signed Task Order, and a Notice to Proceed (NTP) has been issued. All Task Orders will require Cost Containment Insurance as specified in this Section H. The Government will review and approve the insurance policy, along with all applicable endorsements, award the task order, and issue the Notice to Proceed once the final binding policy along with all applicable endorsements, is issued and approved by the Government's Contracting Officer. Approval of the final binding policy will not unreasonably withheld as long as the terms and conditions agree with those contained in the final draft policy.

f. All Task Orders issued hereunder are subject to the terms and conditions of the base contract. The base contract shall control in the event of a conflict with any Task Order. There are multiple clauses covering the same obligations by contract type. Individual Task Orders or Contractors (depending on the size of the business) will be governed by the applicable clauses.

(End of Provision)

(End of Section H)

Section I – Contract Clauses

52.252-2 – Clauses Incorporated By Reference (Feb 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

<http://www.arnet.gov/far>
<http://farsite.hill.af.mil>
<http://www.dtic.mil/dfars>

(End of clause)

252.201-7000 – Contracting Officer's Representative (Dec 1991)

(a) Definition. "Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the Contracting Officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the Contracting Officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

52.202-1 – Definitions (Dec 2001)

252.203-7001 – Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (Mar 1999)

(a) Definitions. As used in this clause-

(1) "Arising out of a contract with the DoD" means any act in connection with-

(i) Attempting to obtain;

(ii) Obtaining; or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) "Conviction of fraud or any other felony" means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(3) "Date of conviction" means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving-

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) On the board of directors of any DoD contractor or first-tier subcontractor;

(3) As a consultant, agent, or representative for any DoD contractor or first-tier subcontractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly-

(1) Employing a person under a prohibition specified in paragraph (b) of this clause;
or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as-

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify-

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and

(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

(End of clause)

252.203-7002 – Display of DoD Hotline Poster (Dec 1991)

(a) The Contractor shall display prominently in common work areas within business segments performing work under Department of Defense (DoD) contracts, DoD Hotline Posters prepared by the DoD Office of the Inspector General.

(b) DoD Hotline Posters may be obtained from the DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202-2884.

(c) The Contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of clause)

52.203-3 – Gratuities (Apr 1984)

52.203-5 – Covenant Against Contingent Fees (Apr 1984)

52.203-6 – Restrictions on Subcontractor Sales to the Government (Jul 1995)

52.203-7 – Anti-Kickback Procedures (Jul 1995)

52.203-8 – Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Jan 1997)

52.203-10 – Price or Fee Adjustment for Illegal or Improper Activity (Jan 1997)

52.203-12 – Limitation on Payments to Influence Certain Federal Transactions (Jun 2003)

252.204-7000 – Disclosure of Information (Dec 1991)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless-

(1) The Contracting Officer has given prior written approval; or

(2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 45 days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of clause)

252.204-7004 – Required Central Contractor Registration (Nov 2001)

(a) Definitions. As used in this clause-

(1) "Central Contractor Registration (CCR) database" means the primary DoD repository for contractor information required for the conduct of business with DoD.

(2) "Data Universal Number System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) "Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) "Registered in the CCR database" means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b) (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423, or via the Internet at <http://www.ccr.gov>.

(End of clause)

52.204-4 – Printed or Copied Double-Sided on Recycled Paper (Aug 2000)

252.205-7000 – Provision of Information to Cooperative Agreement Holders (Dec 1991)

(a) *Definition.* "Cooperative agreement holder" means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450(c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

252.209-7000 – Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty (Nov 1995)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty, or a similar treaty, solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts exceeding the simplified acquisition threshold in Part 13 of the Federal Acquisition Regulation, except those for commercial items.

(End of clause)

252.209-7001 – Disclosure of Ownership or Control by the Government of a Terrorist Country (Mar 1998)

(a) Definitions. As used in this provision-

(1) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international

terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) "Significant interest" means-

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) Prohibition on award. In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) Disclosure. If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include-

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each government.

(End of provision)

252.209-7004 - Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country (Mar 1998)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$25,000 with a firm, or a subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(End of clause)

**52.209-6 – Protecting the Governments Interest When Subcontracting with Contractors
Debarred, Suspended, or Proposed for Debarment (Jul 1995)**

252.211-7003 – Item Identification and Valuation (Jan 2004)

(a) *Definitions.* As used in this clause-

"Automatic identification device" means a device, such as a reader or interrogator, used to retrieve data encoded on machine-readable media.

"Commonly accepted commercial marks" means any system of marking products for identification that is in use generally throughout commercial industry or within commercial industry sectors. Some examples of commonly accepted commercial marks are: EAN.UCC Global Trade Item Number; Automotive Industry Action Group B-4 Parts Identification and Tracking Application Standard, and B-2 Vehicle Identification Number Bar Code Label Standard; American Trucking Association Vehicle Maintenance Reporting Standards; Electronic Industries Alliance EIA 802 Product Marking Standard; and Telecommunications Manufacturers Common Language Equipment Identification Code.

"Concatenated unique item identifier" means-

(1) For items that are serialized within the enterprise identifier, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, and unique serial number within the enterprise identifier; or

(2) For items that are serialized within the original part number, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, original part number, and serial number within the part number.

"Data qualifier" means a specified character (or string of characters) that immediately precedes a data field that defines the general category or intended use of the data that follows.

"DoD recognized unique identification equivalent" means a unique identification method that is in commercial use and has been recognized by DoD. All DoD recognized unique identification equivalents are listed at <http://www.acq.osd.mil/uid>.

"DoD unique item identification" means marking an item with a unique item identifier that has machine-readable data elements to distinguish it from all other like and unlike items. In addition-

(1) For items that are serialized within the enterprise identifier, the unique identifier shall include the data elements of issuing agency code, enterprise identifier, and a unique serial number.

(2) For items that are serialized within the part number within the enterprise identifier, the unique identifier shall include the data elements of issuing agency code, enterprise identifier, the original part number, and the serial number.

"Enterprise" means the entity (i.e., a manufacturer or vendor) responsible for assigning unique item identifiers to items.

"Enterprise identifier" means a code that is uniquely assigned to an enterprise by a registration (or controlling) authority.

"Government's unit acquisition cost" means-

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery; and

(2) For cost-type line, subline, or exhibit line items, the Contractor's estimated fully burdened unit cost to the Government for each item at the time of delivery.

"Issuing agency code" means a code that designates the registration (or controlling) authority.

"Item" means a single hardware article or unit formed by a grouping of subassemblies, components, or constituent parts required to be delivered in accordance with the terms and conditions of this contract.

"Machine-readable" means an automatic information technology media, such as bar codes, contact memory buttons, radio frequency identification, or optical memory cards.

"Original part number" means a combination of numbers or letters assigned by the enterprise at asset creation to a class of items with the same form, fit, function, and interface.

"Registration (or controlling) authority" means an organization responsible for assigning a non-repeatable identifier to an enterprise (i.e., Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, Uniform Code Council (UCC)/EAN International (EAN) Company Prefix, or Defense Logistics Information System (DLIS) Commercial and Government Entity (CAGE) Code).

"Serial number within the enterprise identifier" or "unique serial number" means a combination of numbers, letters, or symbols assigned by the enterprise to an item that provides for the differentiation of that item from any other like and unlike item and is never used again within the enterprise.

"Serial number within the part number" or "serial number" means a combination of numbers or letters assigned by the enterprise to an item that provides for the differentiation of that item from any other like item within a part number assignment.

"Serialization within the enterprise identifier" means each item produced is assigned a serial number that is unique among all the tangible items produced by the enterprise and is never used again. The enterprise is responsible for ensuring unique serialization within the enterprise identifier.

"Serialization within the part number" means each item of a particular part number is assigned a unique serial number within that part number assignment. The enterprise is responsible for ensuring unique serialization within the part number within the enterprise identifier.

"Unique item identification" means marking an item with machine-readable data elements to distinguish it from all other like and unlike items.

"Unique item identifier" means a set of data marked on items that is globally unique, unambiguous, and robust enough to ensure data information quality throughout life and to support multi-faceted business applications and users.

"Unique item identifier type" means a designator to indicate which method of uniquely identifying a part has been used. The current list of accepted unique item identifier types is maintained at <http://www.acq.osd.mil/uid>.

(b) The Contractor shall deliver all items under a contract line, subline, or exhibit line item.

(c) *Unique item identification.*

(1) The Contractor shall provide DoD unique item identification, or a DoD recognized unique identification equivalent, for-

(i) All items for which the Government's unit acquisition cost is \$5,000 or more; and

(ii) The following items for which the Government's unit acquisition cost is less than \$5,000:

Contract Line, Subline, or
Exhibit Line Item Number Item Description

(iii) Subassemblies, components, and parts embedded within items as specified in Exhibit Number ____ or Contract Data Requirements List Item Number ____.

(2) The unique item identifier and the component data elements of the unique item identifier shall not change over the life of the item.

(3) *Data syntax and semantics.* The Contractor shall-

(i) Mark the encoded data elements (except issuing agency code) on the item using any of the following three types of data qualifiers, as specified elsewhere in the contract:

(A) Data Identifiers (DIs) (Format 06).

(B) Application Identifiers (AIs) (Format 05), in accordance with ISO/IEC International Standard 15418, Information Technology - EAN/UCC Application Identifiers and ASC MH 10 Data Identifiers and ASC MH 10 Data Identifiers and Maintenance.

(C) Text Element Identifiers (TEIs), in accordance with the DoD collaborative solution "DD" format for use until the final solution is approved

by ISO JTC1/SC 31. The DoD collaborative solution is described in Appendix D of the DoD Guide to Uniquely Identifying Items, available at <http://www.acq.osd.mil/uid>; and

(ii) Use high capacity automatic identification devices in unique identification that conform to ISO/IEC International Standard 15434, Information Technology - Syntax for High Capacity Automatic Data Capture Media.

(4) *Marking items.*

(i) Unless otherwise specified in the contract, data elements for unique identification (enterprise identifier, serial number, and, for serialization within the part number only, original part number) shall be placed on items requiring marking by paragraph (c)(1) of this clause in accordance with the version of MIL-STD-130, Identification Marking of U.S. Military Property, cited in the contract Schedule.

(ii) The issuing agency code-

(A) Shall not be placed on the item; and

(B) Shall be derived from the data qualifier for the enterprise identifier.

(d) *Commonly accepted commercial marks.* The Contractor shall provide commonly accepted commercial marks for items that are not required to have unique identification under paragraph (c) of this clause.

(e) *Material Inspection and Receiving Report.* The Contractor shall report at the time of delivery, as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

(1) Description.*

(2) Unique identifier,** consisting of-

(i) Concatenated DoD unique item identifier; or

(ii) DoD recognized unique identification equivalent.

(3) Unique item identifier type.**

(4) Issuing agency code (if DoD unique item identifier is used).**

(5) Enterprise identifier (if DoD unique item identifier is used).**

(6) Original part number.**

(7) Serial number.**

(8) Quantity shipped.*

(9) Unit of measure.*

(10) Government's unit acquisition cost.*

(11) Ship-to code.

(12) Shipment date.

(13) Contractor's CAGE code or DUNS number.

(14) Contract number.

(15) Contract line, subline, or exhibit line item number.*

(16) Acceptance code.

* Once per contract line, subline, or exhibit line item.

** Once per item.

(f) *Material Inspection and Receiving Report for embedded subassemblies, components, and parts requiring unique item identification.* The Contractor shall report at the time of delivery, as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

(1) Unique item identifier of the item delivered under a contract line, subline, or exhibit line item that contains the embedded subassembly, component, or part.

(2) Unique item identifier of the embedded subassembly, component, or part, consisting of-

(i) Concatenated DoD unique item identifier; or

(ii) DoD recognized unique identification equivalent.

(3) Unique item identifier type.**

(4) Issuing agency code (if DoD unique item identifier is used).**

(5) Enterprise identifier (if DoD unique item identifier is used).**

(6) Original part number.**

(7) Serial number.**

(8) Unit of measure.

(9) Description.

** Once per item.

(g) The Contractor shall submit the information required by paragraphs (e) and (f) of this clause in accordance with the procedures at <http://www.acq.osd.mil/uid>.

(h) *Subcontracts.* If paragraph (c)(1)(iii) of this clause applies, the Contractor shall include this clause, including this paragraph (h), in all subcontracts issued under this contract.

(End of clause)

**52.211-10 I - Commencement, Prosecution, and Completion of Work - Alternate I
(Apr 1984)**

252.215-7000 - Pricing Adjustments (Dec 1991)

The term "pricing adjustment," as used in paragraph (a) of the clauses entitled "Price Reduction for Defective Cost or Pricing Data--Modifications," "Subcontractor Cost or Pricing Data," and "Subcontractor Cost or Pricing Data--Modifications," means the aggregate increases and/or decreases in cost plus applicable profits.

(End of clause)

252.215-7002 - Cost Estimating System Requirements (Oct 1998)

(a) *Definition.* "Estimating system" means the Contractor's policies, procedures, and practices for generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. Estimating system includes the Contractor's-

- (1) Organizational structure;
- (2) Established lines of authority, duties, and responsibilities;
- (3) Internal controls and managerial reviews;
- (4) Flow of work, coordination, and communication; and

(5) Estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

(b) *General.*

(1) The Contractor shall establish, maintain, and comply with an estimating system that is consistently applied and produces reliable, verifiable, supportable, and documented cost estimates that are an acceptable basis for negotiation of fair and reasonable prices.

(2) The system should be-

(i) Consistent and integrated with the Contractor's related management systems; and

(ii) Subject to applicable financial control systems.

(c) *Applicability.* Paragraphs (d) and (e) of this clause apply if the Contractor is a large business and either-

(1) In its fiscal year preceding award of this contract, received Department of Defense (DoD) prime contracts or subcontracts, totaling \$50 million or more for which cost or pricing data were required; or

(2) In its fiscal year preceding award of this contract-

(i) Received DoD prime contracts or subcontracts totaling \$10 million or more (but less than \$50 million) for which cost or pricing data were required; and

(ii) Was notified in writing by the Contracting Officer that paragraphs (d) and (e) of this clause apply.

(d) *System requirements.*

(1) The Contractor shall disclose its estimating system to the Administrative Contracting Officer (ACO) in writing. If the Contractor wishes the Government to protect the information as privileged or confidential, the Contractor must mark the documents with the appropriate legends before submission.

(2) An estimating system disclosure is acceptable when the Contractor has provided the ACO with documentation that-

(i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the Contractor's estimating practices.

(3) The Contractor shall-

(i) Comply with its disclosed estimating system; and

(ii) Disclose significant changes to the cost estimating system to the ACO on a timely basis.

(e) *Estimating system deficiencies.*

(1) The Contractor shall respond to a written report from the Government that identifies deficiencies in the Contractor's estimating system as follows:

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall-

(A) Within 30 days, state its agreement in writing; and

(B) Within 60 days, correct the deficiencies or submit a corrective action plan showing proposed milestones and actions leading to elimination of the deficiencies.

(ii) If the Contractor disagrees with the report, the Contractor shall, within 30 days, state its rationale for disagreeing.

(2) The ACO will evaluate the Contractor's response and notify the Contractor of the determination concerning remaining deficiencies and/or the adequacy of any proposed or completed corrective action.

(End of clause)

52.215-2 – Audit and Records -- Negotiation (Jun 1999)

52.215-8 – Order of Precedence -- Uniform Contract Format (Oct 1997)

52.215-15 – Pension Adjustments and Asset Reversions (Dec 1998)

52.215-19 – Notification of Ownership Changes (Oct 1997)

52.216-18 – Ordering (Oct 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from Date of Contract Award through Contract Completion.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of Clause)

52.216-19 – Order Limitations (Oct 1995)

52.216-22 – Indefinite Quantity (Oct 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after Contract Completion.

(End of Clause)

52.217-8 – Option to Extend Services (Nov 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days.

(End of Clause)

52.217-9 – Option to Extend the Term of the Contract (Mar 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 60 days of expiration of the base period provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 5 years.

(End of Clause)

252.219-7003 – Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (Apr 1996)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, clause of this contract.

(a) Definitions.

"Historically black colleges and universities," as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

"Minority institutions," as used in this clause, means institutions meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C.1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C.1059c(b)(1)).

(b) Except for company or division-wide commercial items subcontracting plans, the term "small disadvantaged business," when used in the FAR 52.219-9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219-9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of 10 U.S.C.2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C.46-48), may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under Section 831 of Pub.L.101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded --

(1) Protege firms which are qualified organizations employing the severely handicapped; and

(2) Former protege firms that meet the criteria in Section 831(g)(4) of Pub.L.101-510.

(f) The master plan approval referred to in paragraph (f) of the FAR 52.219-9 clause is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(End of Clause)

***252.219-7004 - Small, Small Disadvantaged and Women-Owned Small Business
Subcontracting Plan (Test Program) (Jun 1997)***

(a) Definition. "Subcontract," as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) The Offeror's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of Section 834 of Pub. L. 101-189, as amended, shall be included in and made a part of the resultant contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of Section 211 of Pub. L. 95-507.

(c) The Contractor shall submit Standard Form (SF) 295, Summary Subcontract Report, in accordance with the instructions on the form, except-

(1) One copy of the SF 295 and attachments shall be submitted to Director, Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (International and Commercial Programs), 3061 Defense Pentagon, Room 2A338, Washington, DC 20301-3061; and

(2) Item 14, Remarks, shall be completed to include semi-annual cumulative-

(i) Small business, small disadvantaged business, and women-owned small business goals; and

(ii) Small business and small disadvantaged business goals, actual accomplishments, and percentages for each of the two designated industry categories.

(d) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

52.219-8 – Utilization of Small Business Concerns (Oct 2000)

52.219-9 – Small Business Subcontracting Plan (Jan 2002)

52.219-14 – Limitations on Subcontracting (Dec 1996)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for --

(1) *Services (except construction)*. At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies)*. The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) *General construction*. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) *Construction by special trade contractors*. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of Clause)

52.222-3 – Convict Labor (Jun 2003)

52.222-4 – Contract Work Hours and Safety Standards Act -- Overtime Compensation (Sep 2000)

52.222-14 – Disputes Concerning Labor Standards (Feb 1988)

52.222-15 – Certification of Eligibility (Feb 1988)

52.222-16 – Approval of Wage Rates (Feb 1988)

52.222-21 – Prohibition of Segregated Facilities (Feb 1999)

52.222-26 – Equal Opportunity (Apr 2002)

52.222-35 – Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)

52.222-36 – Affirmative Action for Workers With Disabilities (Jun 1998)

52.222-37 – Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)

52.222-41 – Service Contract Act of 1965, as Amended (May 1989)

52.222-43 – Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Contracts) (May 1989)

252.223-7002 – Safety Precautions for Ammunition and Explosives (May 1994)

(a) *Definition.* "Ammunition and explosives," as used in this clause-

(1) Means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in the following forms:

- (i) Bulk,
- (ii) Ammunition;
- (iii) Rockets;
- (iv) Missiles;
- (v) Warheads;
- (vi) Devices; and
- (vii) Components of (i) through (vi), except for wholly inert items.

(2) This definition does not include the following, unless the Contractor is using or incorporating these materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or of a weapon system-

- (i) Inert components containing no explosives, propellants, or pyrotechnics;
- (ii) Flammable liquids;
- (iii) Acids;
- (iv) Oxidizers;
- (v) Powdered metals; or
- (vi) Other materials having fire or explosive characteristics.

(b) Safety requirements.

(1) The Contractor shall comply with the requirements of the DoD Contractors' Safety Manual for Ammunition and Explosives, DoD 4145.26-M, hereafter referred to as "the manual," in effect on the date of the solicitation for this contract. The Contractor shall also comply with any other additional requirements included in the schedule of this contract.

(2) The Contractor shall allow the Government access to the Contractor's facilities, personnel, and safety program documentation. The Contractor shall allow authorized Government representatives to evaluate safety programs, implementation, and facilities.

(c) Noncompliance with the manual.

(1) If the Contracting Officer notifies the Contractor of any noncompliance with the manual or schedule provisions, the Contractor shall take immediate steps to correct the noncompliance. The Contractor is not entitled to reimbursement of costs incurred to correct noncompliances unless such reimbursement is specified elsewhere in the contract.

(2) The Contractor has 30 days from the date of notification by the Contracting Officer to correct the noncompliance and inform the Contracting Officer of the actions taken. The Contracting Officer may direct a different time period for the correction of noncompliances.

(3) If the Contractor refuses or fails to correct noncompliances within the time period specified by the Contracting Officer, the Government has the right to direct the Contractor to cease performance on all or part of this contract. The Contractor shall not resume performance until the Contracting Officer is satisfied that the corrective action was effective and the Contracting Officer so informs the Contractor.

(4) The Contracting Officer may remove Government personnel at any time the Contractor is in noncompliance with any safety requirement of this clause.

(5) If the direction to cease work or the removal of Government personnel results in increased costs to the Contractor, the Contractor shall not be entitled to an adjustment in the contract price or a change in the delivery or performance schedule unless the Contracting Officer later determines that the Contractor had in fact complied with the manual or schedule provisions. If the Contractor is entitled to an equitable adjustment, it shall be made in accordance with the Changes clause of this contract.

(d) Mishaps. If a mishap involving ammunition or explosives occurs, the Contractor shall-

(1) Notify the Contracting Officer immediately;

(2) Conduct an investigation in accordance with other provisions of this contract or as required by the Contracting Officer; and

(3) Submit a written report to the Contracting Officer.

(e) Contractor responsibility for safety.

(1) Nothing in this clause, nor any Government action or failure to act in surveillance of this contract, shall relieve the Contractor of its responsibility for the safety of-

- (i) The Contractor's personnel and property;
- (ii) The Government's personnel and property; or
- (iii) The general public.

(2) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, State, and local laws, ordinances, codes, and regulations (including those requiring the obtaining of licenses and permits) in connection with the performance of this contract.

(f) Contractor responsibility for contract performance.

(1) Neither the number or frequency of inspections performed by the Government, nor the degree of surveillance exercised by the Government, relieve the Contractor of its responsibility for contract performance.

(2) If the Government acts or fails to act in surveillance or enforcement of the safety requirements of this contract, this does not impose or add to any liability of the Government.

(g) Subcontractors.

(1) The Contractor shall insert this clause, including this paragraph (g), in every subcontract that involves ammunition or explosives.

(i) The clause shall include a provision allowing authorized Government safety representatives to evaluate subcontractor safety programs, implementation, and facilities as the Government determines necessary.

(ii) NOTE: The Government Contracting Officer or authorized representative shall notify the prime Contractor of all findings concerning subcontractor safety and compliance with the manual. The Contracting Officer or authorized representative may furnish copies to the subcontractor. The Contractor in turn shall communicate directly with the subcontractor, substituting its name for references to "the Government". The Contractor and higher tier subcontractors shall also include provisions to allow direction to cease performance of the subcontract if a serious uncorrected or recurring safety deficiency potentially causes an imminent hazard to DoD personnel, property, or contract performance.

(2) The Contractor agrees to ensure that the subcontractor complies with all contract safety requirements. The Contractor will determine the best method for verifying the adequacy of the subcontractor's compliance.

(3) The Contractor shall ensure that the subcontractor understands and agrees to the Government's right to access to the subcontractor's facilities, personnel, and safety program documentation to perform safety surveys. The Government performs these safety surveys of subcontractor facilities solely to prevent the occurrence of any mishap which would endanger the safety of DoD personnel or otherwise adversely impact upon the Government's contractual interests.

(4) The Contractor shall notify the Contracting Officer or authorized representative before issuing any subcontract when it involves ammunition or explosives. If the proposed

subcontract represents a change in the place of performance, the Contractor shall request approval for such change in accordance with the clause of this contract entitled "Change in Place of Performance--Ammunition and Explosives".

(End of clause)

252.223-7004 – Drug-Free Work Force (Sep 1988)

(a) Definitions.

(1) "Employee in a sensitive position," as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) "Illegal drugs," as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing --

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of Subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11, 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such time as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing programs shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of Clause)

252.223-7006 – Prohibition on Storage and Disposal of Toxic and Hazardous Materials - Alternate I (Nov 1995)

(a) Definitions. As used in this clause-

(1) "Storage" means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

(2) "Toxic or hazardous materials" means:

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR Part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing or disposing of non-DoD-owned toxic or hazardous materials on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his designee.

(c) With respect to treatment or disposal authorized pursuant to 10 U.S.C. 2692(b)(9), and notwithstanding any other provision of the contract, the Contractor assumes all financial and environmental responsibility and liability resulting from any treatment or disposal of non-DoD-owned toxic or hazardous materials on a military installation. The Contractor shall indemnify, defend, and hold the Government harmless for all costs, liability, or penalties resulting from the Contractor's treatment or disposal of non-DoD-owned toxic or hazardous materials on a military installation.

(d) The Contractor shall include this clause, including this paragraph (d), in each subcontract which requires, may require, or permits a subcontractor to treat or dispose of non-DoD-owned toxic or hazardous materials as defined in this clause.

(End of clause)

***252.223-7007 – Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives
(Sep 1999)***

(a) *Definition.* "Arms, ammunition, and explosives (AA&E)," as used in this clause, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

(b) The requirements of DoD 5100.76-M apply to the following items of AA&E being developed, produced, manufactured, or purchased for the Government, or provided to the Contractor as Government-furnished property under this contract:

NOMENCLATURE	NATIONAL STOCK NUMBER	SENSITIVITY/ CATEGORY

(c) The Contractor shall comply with the requirements of DoD 5100.76-M, as specified in the statement of work. The edition of DoD 5100.76-M in effect on the date of issuance of the solicitation for this contract shall apply.

(d) The Contractor shall allow representatives of the Defense Security Service (DSS), and representatives of other appropriate offices of the Government, access at all reasonable times into its facilities and those of its subcontractors, for the purpose of performing surveys, inspections, and investigations necessary to review compliance with the physical security standards applicable to this contract.

(e) The Contractor shall notify the cognizant DSS field office of any subcontract involving AA&E within 10 days after award of the subcontract.

(f) The Contractor shall ensure that the requirements of this clause are included in all subcontracts, at every tier-

(1) For the development, production, manufacture, or purchase of AA&E; or

(2) When AA&E will be provided to the subcontractor as Government-furnished property.

(g) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, state, and local laws, ordinances, codes, and regulations (including requirements for obtaining licenses and permits) in connection with the performance of this contract.

(End of clause)

(Revised January 13, 2004)

52.223-3 - Hazardous Material Identification and Material Safety Data (Jan 1997)

52.223-5 - Pollution Prevention and Right-to-Know Information (Apr 1998)

52.223-6 - Drug-Free Workplace (Mar 2001)

252.223-7004 - Drug-Free Work Force (Sep 1988)

(a) *Definitions.*

(1) "Employee in a sensitive position," as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) "Illegal drugs," as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing-

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of Subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11, 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such time as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing programs shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

52.223-10 – Waste Reduction Program (Aug 2000)

52.223-14 – Toxic Chemical Release Reporting (Jun 2003)

252.225-7000 – Buy American Act--Balance of Payments Program Certificate (Apr 2003)

(a) *Definitions.* "Domestic end product," "foreign end product," "qualifying country," and "qualifying country end product" have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government-

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will evaluate offers of qualifying country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American Act and Balance of Payments Program clause of this solicitation, the offeror certifies that-

(i) Each end product, except those listed in paragraphs (c)(2) or (3) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror certifies that the following end products are qualifying country end products:

Line Item Number

Country of Origin

(3) The following end products are other foreign end products:

Line Item Number

Country of Origin (If known)

(End of provision)

252.225-7002 – Qualifying Country Sources as Subcontractors (Apr 2003)

(a) *Definition.* "Qualifying country," as used in this clause, means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation (FAR) Supplement.

(b) Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources or U.S. sources from competing for subcontracts under this contract.

(End of clause)

252.225-7021 – Trade Agreements (Aug 2003)

(a) *Definitions.* As used in this clause-

(1) "Caribbean Basin country" means-

Antigua and Barbuda	El Salvador	Nicaragua
Aruba	Grenada	St. Kitts-Nevis
Bahamas	Guatemala	St. Lucia
Barbados	Guyana	St. Vincent and the
Belize	Haiti	Grenadines
British Virgin Islands	Honduras	Trinidad and Tobago
Costa Rica	Jamaica	
Dominica	Montserrat	
Dominican Republic	Netherlands Antilles	

(2) "Caribbean Basin country end product"-

(i) Means an article that-

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself; and

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of-

(A) Textiles, apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and handloomed, handmade, or folklore articles that are not granted duty-free status in the Harmonized Tariff Schedule of the United States (HTSUS);

(B) Tuna, prepared or preserved in any manner in airtight containers; and

(C) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.

(3) "Component" means an article, material, or supply incorporated directly into an end product.

(4) "Designated country" means-

Aruba	Germany	Netherlands
Austria	Greece	Niger
Bangladesh	Guinea	Norway
Belgium	Guinea-Bissau	Portugal
Benin	Haiti	Republic of Korea
Bhutan	Hong Kong	Rwanda
Botswana	Iceland	Sao Tome and Principe
Burkina Faso	Ireland	Sierra Leone
Burundi	Israel	Singapore
Canada	Italy	Somalia
Cape Verde	Japan	Spain
Central African Republic	Kiribati	Sweden
Chad	Lesotho	Switzerland
Comoros	Liechtenstein	Tanzania U.R.
Denmark	Luxembourg	Togo
Djibouti	Malawi	Tuvalu
Equatorial Guinea	Maldives	Uganda
Finland	Mali	United Kingdom
France	Mozambique	Vanuatu
Gambia	Nepal	Western Samoa
		Yemen

(5) "Designated country end product" means an article that-

(i) Is wholly the growth, product, or manufacture of the designated country;
or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(6) "End product" means those articles, materials, and supplies to be acquired under this contract for public use.

(7) "NAFTA country end product" means an article that-

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation

services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(8) "Nondesignated country end product" means any end product that is not a U.S.-made end product or a designated country end product.

(9) "North American Free Trade Agreement (NAFTA) country" means Canada or Mexico.

(10) "Qualifying country" means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(11) "Qualifying country end product" means-

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.

(12) "United States" means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(13) "U.S.-made end product" means an article that-

(i) Is mined, produced, or manufactured in the United States; or

(ii) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

(b) This clause implements the Trade Agreements Act of 1979 (19 U.S.C. 2501, et seq.), the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note), and the Caribbean Basin Initiative. Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products unless-

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2) The Government determines that-

(i) Offers of U.S.-made end products or qualifying, designated, Caribbean Basin, or NAFTA country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest exception to the Trade Agreements Act applies.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(e) The HTSUS is available on the Internet at <http://www.customs.ustreas.gov/impexpo/impexpo.htm>. The following sections of the HTSUS provide information regarding duty-free status of articles specified in paragraph (a)(2)(ii)(A) of this clause:

(1) General Note 3(c), Products Eligible for Special Tariff Treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries Under the United States--Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits Under the United States--Caribbean Basin Trade Partnership Act.

(End of clause)

252.225-7031 – Secondary Arab Boycott of Israel (Apr 2003)

(a) *Definitions.* As used in this provision-

(1) "Foreign person" means any person (including any individual, partnership, corporation, or other form of association) other than a United States person.

(2) "United States person" is defined in 50 U.S.C. App. 2415(2) and means-

(i) Any United States resident or national (other than an individual resident outside the United States who is employed by other than a United States person);

(ii) Any domestic concern (including any permanent domestic establishment of any foreign concern); and

(iii) Any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.

(b) *Certification.* If the offeror is a foreign person, the offeror certifies, by submission of an offer, that it-

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. 2407(a) prohibits a United States person from taking.

(End of Provision)

52.225-13 – Restrictions on Certain Foreign Purchases (Jun 2003)

52.226-1 – Utilization of Indian Organizations and Indian-Owned Economic Enterprises (Jun 2000)

252.227-7000 – Non-Estoppel (Oct 1966)

The Government reserves the right at any time to contest the enforceability, validity, scope of, or the title to any patent or patent application herein licensed without waiving or forfeiting any right under this contract.

(End of clause)

252.227-7002 – Readjustment of Payments (Oct 1966)

(a) If any license, under substantially the same patents and authorizing substantially the same acts which are authorized under this contract, has been or shall hereafter be granted within the United States, on royalty terms which are more favorable to the licensee than those contained herein, the Government shall be entitled to the benefit of such more favorable terms with respect to all royalties accruing under this contract after the date such more favorable terms become effective, and the Contractor shall promptly notify the Secretary in writing of the granting of such more favorable terms.

(b) In the event any claim of any patent hereby licensed is construed or held invalid by decision of a court of competent jurisdiction, the requirement to pay royalties under this contract insofar as it arises solely by reason of such claim, and any other claim not materially different therefrom, shall be interpreted in conformity with the court's decision as to the scope of validity of such claims; Provided, however, that in the event such decision is modified or reversed on appeal, the requirement to pay royalties under this contract shall be interpreted in conformity with the final decision rendered on such appeal.

(End of clause)

252.227-7020 – Rights in Special Works (Jun 1995)

(a) Applicability. This clause applies to works first created, generated, or produced and required to be delivered under this contract.

(b) Definitions. As used in this clause:

(1) "Computer data base" means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(2) "Computer program" means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(3) "Computer software" means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

(4) "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) "Unlimited rights" means the rights to use, modify, reproduce, perform, display, release, or disclose a work in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(6) The term "works" includes computer data bases, computer software, or computer software documentation; literary, musical, choreographic, or dramatic compositions; pantomimes; pictorial, graphic, or sculptural compositions; motion pictures and other audiovisual compositions; sound recordings in any medium; or, items of similar nature.

(c) License rights.

(1) The Government shall have unlimited rights in works first produced, created, or generated and required to be delivered under this contract.

(2) When a work is first produced, created, or generated under this contract, and such work is required to be delivered under this contract, the Contractor shall assign copyright in those works to the Government. The Contractor, unless directed to the contrary by the Contracting Officer, shall place the following notice on such works:

"© (Year date of delivery) United States Government, as represented by the Secretary of (department). All rights reserved."

For phonorecords, the "©" marking shall be replaced by a "P".

(3) The Contractor grants to the Government a royalty-free, world-wide, nonexclusive, irrevocable license to reproduce, prepare derivative works from, distribute, perform, or display, and to have or authorize others to do so, the Contractor's copyrighted works not first produced, created, or generated under this contract that have been incorporated into the works deliverable under this contract.

(d) Third party copyrighted data. The Contractor shall not incorporate, without the written approval of the Contracting Officer, any copyrighted works in the works to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license of the scope identified in paragraph (c)(3) of this clause and, prior to delivery of such works-

(1) Has affixed to the transmittal document a statement of the license rights obtained; or

(2) For computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer.

(e) Indemnification. The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, use, modification, reproduction, release, performance, display, or disclosure of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in such works.

(f) Government-furnished information. Paragraphs (d) and (e) of this clause are not applicable to information furnished to the Contractor by the Government and incorporated in the works delivered under this contract.

(End of clause)

252.227-7021 – Rights in Data--Existing Works (Mar 1979)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this contract and (2) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in same works.

(End of clause)

252.227-7022 – Government Rights (Unlimited) (Mar 1979)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

252.227-7023 – Drawings and Other Data to Become Property of Government (Mar 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright

laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

252.227-7033 – Rights in Shop Drawings (Apr 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

52.227-1 – Authorization and Consent (Jul 1995)

52.227-2 – Notice and Assistance Regarding Patent and Copyright Infringement (Aug 1996)

52.227-14 – Rights in Data -- General (Jun 1987)

52.228-5 – Insurance -- Work on a Government Installation (Jan 1997)

52.228-11 -- Pledges of Assets (Feb 1992)

52.228-14 -- Irrevocable Letter of Credit (Dec 1999)

52.229-2 – North Carolina State and Local Sales and Use Tax (Apr 1984)

52.229-3 – Federal, State, and Local Taxes (Apr 2003)

52.229-10 – State of New Mexico Gross Receipts and Compensating Tax (Apr 2003)

52.230-2 – Cost Accounting Standards (Apr 1998)

52.230-3 – Disclosure and Consistency of Cost Accounting Practices (Apr 1998)

52.230-6 – Administration of Cost Accounting Standards (Nov 1999)

252.231-7000 – Supplemental Cost Principles (Dec 1991)

When the allowability of costs under this contract is determined in accordance with Part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with Part 231 of the Defense FAR Supplement, in effect on the date of this contract.

(End of clause)

252.232-7003 - Electronic Submission of Payment Requests (Mar 2003)

(a) *Definitions.* As used in this clause-

(1) "Contract financing payment" and "invoice payment" have the meanings given in section 32.001 of the Federal Acquisition Regulation.

(2) "Electronic form" means any automated system that transmits information electronically from the initiating system to all affected systems. Facsimile, e-mail, and scanned documents are not acceptable electronic forms.

(3) "Payment request" means any request for contract financing payment or invoice payment submitted by the Contractor under this contract.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests using one of the following electronic forms:

(1) Wide Area WorkFlow-Receipt and Acceptance (WAWF-RA). Information regarding WAWF-RA is available on the Internet at <https://rmb.ogden.disa.mil>.

(2) Web Invoicing System (WInS). Information regarding WInS is available on the Internet at <https://ecweb.dfas.mil>.

(3) American National Standards Institute (ANSI) X.12 electronic data interchange (EDI) formats.

(i) Information regarding EDI formats is available on the Internet at <http://www.X12.org>.

(ii) EDI implementation guides are available on the Internet at <http://www.dfas.mil/ecedi>.

(4) Another electronic form authorized by the Contracting Officer.

(c) If the Contractor is unable to submit a payment request in electronic form, or DoD is unable to receive a payment request in electronic form, the Contractor shall submit the payment request using a method mutually agreed to by the Contractor, the Contracting Officer, and the payment office.

(d) In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payment requests.

(End of clause)

***252.232-7005 – Reimbursement of Subcontractor Advance Payments--DoD Pilot
Mentor-Protege Program (Sep 2001)***

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a protege firm, pursuant to an approved mentor-protege agreement, provided-

(1) The Contractor's subcontract with the protege firm includes a provision substantially the same as FAR 52.232-12, Advance Payments;

(2) The Contractor has administered the advance payments in accordance with the policies of FAR Subpart 32.4; and

(3) The Contractor agrees that any financial loss resulting from the failure or inability of the protege firm to repay any unliquidated advance payments is the sole financial responsibility of the Contractor.

(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if they were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1443, Contractor's Request for Progress Payment, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1443 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed by the cognizant contracting officer or contract auditor.

(End of clause)

252.232-7007 - Limitation of Government's Obligation (AUG 1993)

(a) Contract line item(s) * through * are incrementally funded. For these item(s), the sum of \$ * of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (i) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor will not be obligated to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government." As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (i) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (i) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the

allotment schedule in paragraph (i) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(i) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract	\$ _____
(month) (day), 199x	\$ _____
(month) (day), 199y	\$ _____
(month) (day), 199z	\$ _____

(End of clause)

ALTERNATE I (AUG 1993).

If only one line item will be incrementally funded, substitute the following paragraph (a) for paragraph

(a) of the basic clause:

(a) Contract line item _____ is incrementally funded. The sum of \$*_ is presently available for payment and allotted to this contract. An allotment schedule is contained in paragraph (i) of this clause.

* To be inserted after negotiation.

52.232-1 – Payments (Apr 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if --

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

(End of Clause)

52.232-8 – Discounts for Prompt Payment (May 1997)

52.232-9 – Limitation on Withholding of Payments (Apr 1984)

52.232-11 – Extras (Apr 1984)

52.232-13 – Notice of Progress Payments (Apr 1984)

The need for customary progress payments conforming to the regulations in Subpart 32.5 of the Federal Acquisition Regulation (FAR) will not be considered as a handicap or adverse factor in the award of the contract. The Progress Payments clause included in this solicitation will be included in any resulting contract, modified or altered if necessary in accordance with subsection 52.232-16 and its Alternate I of the FAR. Even though the clause is included in the contract, the clause shall be inoperative during any time the contractor's accounting system and controls are determined by the Government to be inadequate for segregation and accumulation of contract costs.

(End of Provision)

52.232-17 – Interest (Jun 1996)

52.232-18 – Availability of Funds (Apr 1984)

52.232-23 – Assignment of Claims (Jan 1986)

52.232-25 -- Prompt Payment (Feb 2002)

52.232-32 -- Performance-Based Payments (Feb 2002)

(a) Amount of payments and limitations on payments. Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract's description of the basis for payment.

(b) Contractor request for performance-based payment. The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Contractor's request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

(c) Approval and payment of requests.

(1) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved requests on the 30th day after receipt of the request for performance-based payment. However, the designated payment office is not required to provide payment if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the Contractor certification. The payment period will not begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

(d) Liquidation of performance-based payments.

(1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the Contractor shall repay to the Government the excess. Unless otherwise determined by the Contracting Officer, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) Reduction or suspension of performance-based payments. The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (h) and (i) of this clause).

(2) Performance of this contract is endangered by the Contractor's --

(i) Failure to make progress; or

(ii) Unsatisfactory financial condition.

(3) The Contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.

(f) Title.

(1) Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract

(2) "Property," as used in this clause, includes all of the following described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;

(iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (f)(2)(ii) of this clause; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract (e.g., the termination or special tooling clauses) shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract, without requesting the Contracting Officer's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Contracting Officer.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or

needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the Contractor for all property (or the proceeds thereof) not --

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(g) Risk of loss. Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) Records and controls. The Contractor shall maintain records and controls adequate for administration of this clause. The Contractor shall have no entitlement to performance-based payments during any time the Contractor's records or controls are determined by the Contracting Officer to be inadequate for administration of this clause.

(i) Reports and Government access. The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's records and to examine and verify the Contractor's performance of this contract for administration of this clause.

(j) Special terms regarding default. If this contract is terminated under the Default clause,

(1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance-based payments, and

(2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.

(k) Reservation of rights.

(1) No payment or vesting of title under this clause shall --

(i) Excuse the Contractor from performance of obligations under this contract;
or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause --

(i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(l) Content of Contractor's request for performance-based payment. The Contractor's request for performance-based payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for performance-based payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made;

(4) Such information and documentation as is required by the contract's description of the basis for payment; and

(5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m) of this clause.

(m) Content of Contractor's certification. As required in paragraph (l)(5) of this clause, the Contractor shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that --

(1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract and the instructions of the Contracting Officer;

(2) (Except as reported in writing on _____), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;

(3) There are no encumbrances (except as reported in writing on _____) against the property acquired or produced for, and allocated or properly chargeable to, the contract which would affect or impair the Government's title;

(4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated _____; and

(5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been

requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

(End of Clause)

***52.232-33 – Payment by Electronic Funds Transfer -- Central Contractor Registration
(May 1999)***

52.233-1 I – Disputes (Jul 2002) – Alternate I (Dec 1991)

52.233-3 – Protest After Award (Aug 1996)

52.237-2 – Protection of Government Buildings, Equipment, and Vegetation (Apr 1984)

52.237-3 – Continuity of Services (Jan 1991)

52.242-1 – Notice of Intent to Disallow Costs (Apr 1984)

52.242-13 – Bankruptcy (Jul 1995)

52.243-1 – Changes – Fixed Price (Aug 1987) - Alternate I (Apr 1984)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

52.244-6 – Subcontracts for Commercial Items (Apr 2003)

(a) *Definitions.* As used in this clause--

"Commercial item" has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)

(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (Oct 200) (15 U.S.C. 637(d)(2)(3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceed \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).

(v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of Clause)

252.245-7001 – Reports of Government Property (May 1994)

(a) The Contractor shall provide an annual report-

(1) For all DoD property for which the Contractor is accountable under the contract;

(2) Prepared in accordance with the requirements of DD Form 1662, DoD Property in the Custody of Contractors, or approved substitute, including instructions on the reverse side of the form;

(3) In duplicate, to the cognizant Government property administrator, no later than October 31.

(b) The Contractor is responsible for reporting all Government property accountable to this contract, including that at subcontractor and alternate locations.

(End of clause)

52.245-1 – Property Records (Apr 1984)

52.245-2 – Government Property (Fixed-Price Contracts) (Jun 2003)

52.245-4 – Government-Furnished Property (Short Form) (Jun 2003)

52.246-20 – Warranty of Services (Mar 2001)

(a) Definition.

"Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.

(b) Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor within 5-years from the date of acceptance by the Government. This notice shall state either --

(1) That the Contractor shall correct or reperform any defective or nonconforming services; or

(2) That the Government does not require correction or reperformance.

(c) If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby, or make an equitable adjustment in the contract price.

(d) If the Government does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price.

(End of Clause)

**52.249-2 I – Termination for Convenience of the Government (Fixed-Price) (Sep 1996)
- Alternate I (Sep 1996)**

**52.249-4 – Termination for Convenience of the Government (Services) (Short Form)
(Apr 1984)**

52.249-8 - Default (Fixed-Price Supply and Service) (Apr 1984)

52.253-1 - Computer Generated Forms (Jan 1991)

(End of Section I)